

173-430 AGRICULTURAL BURNING

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173-430-010 PURPOSE OF THE REGULATION.

This chapter, promulgated under chapter 70.94 RCW, the Washington Clean Air Act, authorizes the department of ecology to implement the provisions of that act. This rule establishes controls for agricultural burning in the state in order to minimize adverse health and the environment effects from agricultural burning. The control strategies include:

- (1) Establishing a permit program with minimum state-wide requirements.
- (2) Providing for implementation of a research program to explore and identify economical and practical alternatives to agricultural burning.
- (3) Encouraging and developing economically feasible alternative methods to agricultural burning.
- (4) Limiting the scope of the rule to agricultural burning and distinguishing between agricultural burning and other types of burning.
- (5) Providing for local administration of the permitting program through delegation.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), §173-430-010, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), §173-430-010, filed 6/28/93, effective 7/29/93.

Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), §173-430-010, filed 9/17/90, effective 10/18/90; Order DE 77-20, §173-430-010, filed 11/9/77. Formerly WAC 18-16-010.]

173-430-020 GENERAL APPLICABILITY.

This regulation applies to burning related to agricultural activities and includes the burning of fields, prunings, weeds, and irrigation ditches, drainage ditches, fence rows or other essential pathways. It does not apply to silvicultural burning or open burning.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), §173-430-020, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), §173-430-020, filed 6/28/93, effective 7/29/93.

Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), §173-430-020, filed 9/17/90, effective 10/18/90; Order DE 77-20, §173-430-020, filed 11/9/77. Formerly WAC 18-16-020.]

173-430-030 DEFINITION OF TERMS.

The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the meanings of the following words and phrases used in this chapter are listed below.

- (1) Agricultural burning: Means the burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.650 or other authoritative source on agricultural practices.
- (2) Agricultural operation: Means a farmer who can substantiate that the operation is commercial agriculture by showing the most recent year's IRS schedule F form or proof that the land is designated in a classification for agricultural use. It also includes burning conducted by irrigation district or drainage district personnel as part of water system management.
- (3) Ag task force: Means the agricultural burning practices and research task force.
- (4) Best management practice: Means the criteria established by the agricultural burning practices and research task force (Ag task force).
- (5) Department: Means the department of ecology.
- (6) Farmer: Means any person engaged in the business of growing or producing for sale upon their own lands, or upon the land in which they have a present right of possession, any agricultural product. Farmer does not mean persons using such products as ingredients in a manufacturing process, or persons growing or producing such products primarily for their own consumption.
- (7) Open burning: Means all forms of burning except those listed as exempt in WAC 173-425-020.
- (8) Permitting authority: Means a local air authority (and the department where no local air authority exists) or their delegate. Conservation districts, counties, fire districts, or fire protection agencies may receive delegation for all or portions of the agricultural burning permit program as identified in a delegation agreement. The permitting authority will issue agricultural burning permits for a given locale.
- (9) Silvicultural burning: Means burning on any land the department of natural resources protects per RCW 70.94.030(13), 70.94.660, 70.94.690, and pursuant to chapter 76.04 RCW.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), §173-430-030, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), §173-430-030, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), §173-430-030, filed 9/17/90, effective 10/18/90; Order DE 77-20, §173-430-030, filed 11/9/77. Formerly WAC 18-16-030.]

WAC 173-430-040 AGRICULTURAL BURNING REQUIREMENTS.

- (1) Agricultural burning is allowed when it is reasonably necessary to carry out the enterprise. A farmer can show it is reasonably necessary when it meets the criteria of the best management practices and no practical alternative is reasonably available.
- (2) All agricultural burning requires a permit.
 - (a) To qualify for an agricultural burning permit the farmer must be an agricultural operation or government entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards.
 - (b) A farmer must fill out the information requested on a permit application (or the permit) and return it to the permitting authority.
 - (i) The permitting authority may require the farmer to fill out an application prior to issuing a permit.
 - (ii) The application must describe the reason for burning and include at least the following information: Name and address of the person or corporation responsible for the burn, the specific location (county; legal description: Range, section, township, block and unit number), the crop type, the type or size of the burn, directions to the burn, specific reason for the burn, the target date for burning, and any additional information required by the permitting authority. Each permitting authority may require additional information on the application.
 - (iii) All applications must comply with other state or local regulations.
 - (c) The permitting authority must evaluate the application, if there is one, and approve the permit prior to burning.
 - (d) Local air agencies (and the department where no local air agency exists) may issue permits for appropriate agricultural burning activities in nonattainment and urban growth areas.
- (3) All agricultural burning permits require a fee. After January 1, 1995, the fee is the greater of:
 - (a) A minimum fee of twenty-five dollars per year per farm based on burning up to ten acres or equivalent which will be used as follows: Twelve dollars and fifty cents of which goes to the agricultural burning research fund and the remainder will be kept by the permitting authority to cover the costs of administering and enforcing this regulation; or
 - (b) A variable fee based on the acreage or equivalent of agricultural burning which will be used as follows: Up to one dollar per acre for applied research, twenty-five cents per acre for ecology administration and up to one dollar and twenty-five cents per acre for local permit program administration.

- (i) Local permitting program administration. One portion of the fee shall cover the permitting authority's costs of administering and enforcing the program. The permitting authority may set the fee as an amount per farm per year, a set amount per fire, or a set rate no greater than one dollar and twenty-five cents per acre burned. The permitting authority must establish this portion of the fee by an appropriate, public process such as a local rule, ordinance, or resolution. In areas of the state where the department is the permitting authority this portion of the fee shall be one dollar and twenty-five cents per acre burned.
 - (ii) Ecology administration. Another portion of the fee shall be twenty-five cents per acre burned and cover the state-wide administrative, education, and oversight costs of the department. The amount (if any) by which the annual total, of this portion of the fee, exceeds the annual state-wide administrative, education, and oversight costs shall be deposited in the agricultural burning research fund of the air pollution control account.
 - (iii) Research fund. A final portion, the agricultural burning applied research portion, of the fee shall be no greater than one dollar per acre burned. The amount assessed may be less than one dollar per acre burned as periodically determined by the Ag task force based on applied research needs, regional needs and the research fund budget. The research portion of the fee assessed shall be fifty cents per acre burned starting in calendar year 1995. The Ag task force may also establish discounted assessment rates based on the use of best management practices.
 - (c) A farmer must pay the fee prior to receiving a permit. Refunds are allowed for portions not burned provided the adjusted fee after subtracting refunds is no less than twenty-five dollars.
 - (d) The agricultural burning practices and research task force may set acreage equivalents, for nonfield style agricultural burning practices, based on the amount of emissions relative to typical field burning emissions. Any acreage equivalents, established by rule, shall be used in determining fees. For agricultural burning conducted by irrigation or drainage districts, each mile of ditch (including banks) burned is calculated on an equivalent acreage basis.
- (4) All agricultural burning permits must be conditioned to minimize air pollution.
- (a) A farmer must comply with the conditions on the agricultural burning permit.
 - (b) For purposes of protecting public health (not eliminating agricultural burning), if an area exceeds or threatens to exceed unhealthy air pollution levels, the permitting authority may limit the number of acres, on a pro rata basis, or as provided by RCW 70.94.656.
 - (c) Permits must be conditioned to minimize emissions insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions. Additional requirements for burning of field and turf grasses grown for seed. The

department of ecology will proceed with the process to certify alternatives to burning as identified in RCW 70.94.656(3). In addition to the certification process, ecology is also limiting the number of acres allowed to be burned as specified in RCW 70.94.656(4). Without regard to any previous burn permit history, in 1996, each farmer shall be limited to burning the greater of:

- (i) Two-thirds of the number of acres the farmer burned under a valid permit issued in 1995; or
 - (ii) Two-thirds of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.
- (d) Additional requirements for burning of field and turf grasses grown for seed. Beginning in 1997 and until approved alternatives become available, each farmer shall be limited to burning no more than one-third of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.
- (e) Exemptions to additional requirements for burning of field and turf grasses grown for seed ((d) of this subsection). A farmer may request an exemption for extraordinary circumstances, such as property where a portion(s) of the field is oddly shaped or where the slope is extremely steep. Under this subsection, relief from the acreage/emissions reduction requirements of (d) of this subsection shall be limited to no more than five percent of the acreage in production on May 1, 1996, and is also subject to the following provisions:
 - (i) The exemption request must be certified by an agronomic professional;
 - (ii) The farmer must be able to show full compliance with the emissions reductions in (d) of this subsection for the acreage not exempted; and
 - (iii) The farmer must be in full compliance with permit requirements for other crops under WAC 173-430-040.
- (f) The department of ecology or local air authority may provide for trading of permits using the method described in (f)(i), (ii), (iii), (iv), (v), and (vi) of this subsection. This trading system uses a straight transfer of acres, a transfer requiring mandatory compensation, or a combination of both. If ecology or the local air authority finds that emissions resulting from trading are creating a health impact, as defined by ecology or the local air authority, the trading system, once created, may be dissolved.
 - (i) Ecology or the local air authority may develop a system that allows the trading of permits by:
 - (A) Adding a signed transfer line to the written permit that provides for a signature for the current holder of the permit;

- (B) Providing a tracking system that identifies the current holder of the permit, that identifies when the permit was last used to allow burning of acreage, and that allows the name of the holder to be changed if the transfer line is signed by the current holder;
 - (C) Requiring that the new holder of the permit must turn in the permit with the signed transfer line at least sixty days before the new holder plans to burn; and
 - (D) Assuring that the permits are used only once in a calendar year.
- (ii) By signing the transfer line on the permit the permit holder must indicate that he or she understands that the acres transferred may no longer be burned, that a permit for the acres transferred will not be issued to the signing permit holder in future years, and that the acres being transferred were not already burned during the calendar year during which the transfer takes place.
 - (iii) Ecology and the local air authorities may add restrictions to the transfer of permits closer to areas with higher population densities.
 - (iv) Only permits for acreage which has not yet been burned may be transferred or traded. The seller of the permit is responsible for permanently reducing the acreage burned by the amount of acreage transferred from January 1 of the year during which the transaction takes place.
 - (v) Acreage that is exempted under (e) of this subsection is not eligible for the trading system.
 - (vi) The authorities are encouraged to work together to use the same system and to allow trading between authority jurisdictions so as to allow the grass seed growers to adjust to the two-thirds overall reduction in acres permitted for burning as easily as possible.
- (g) Measurement for emission reduction for grass seed field and turf grass. Ecology will use acres as the basis for determining emission reductions as provided by RCW 70.94.656, until another method(s) is shown to be better and meets with the intent of RCW 70.94.656(4). Ecology will investigate alternate methods, as they become available. If ecology finds that an alternate method is appropriate and meets the criteria, it may certify this method using an administrative order.
 - (h) Alternate open burning practices for field and turf grass grown for seed. Ecology acknowledges that there may be practices that involve some burning, but which produce emissions quantifiably below those of open field burning. If ecology finds that a practice involves open burning and still substantially reduces emissions below open field burning, ecology may certify the alternate burning practice(s) by administrative order. Any certified practice may be used to satisfy the acreage/emissions reduction requirements of (d) of this subsection provided:

- (i) The acreage application of the practice is adjusted to reflect effectiveness in reducing emissions so as to meet or exceed the emissions reduction required by (d) of this subsection; and
 - (ii) In no case shall the emission reduction requirement for the field and turf grass grown for seed be less than that required in (d) of this subsection.
- (5) Other laws. A farmer must obtain any local permits, licenses, or other approvals required by any other laws, regulations, or ordinances. The farmer must also honor other agreements entered into with any federal, state, or local agency.

[Statutory Authority: RCW 70.94.656(4). 97-03-021 (Order 96-05), § 173-430-040, filed 1/7/97, effective 2/7/97. Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), § 173-430-040, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), § 173-430-040, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-430-040, filed 9/17/90, effective 10/18/90; Order DE 77-20, § 173-430-040, filed 11/9/77. Formerly WAC 18-16-040.]

173-430-050 BEST MANAGEMENT PRACTICES.

- (1) The Ag task force must identify best management practices for agricultural burning that are economically feasible and socially acceptable. Practical alternative production methods and controls which would reduce or eliminate agricultural burning must be used when reasonably available.
- (2) The Ag task force may establish an agricultural burning general best management practice and crop-specific best management practices as appropriate. The Ag task force will work in conjunction with conservation districts and extension agents or other local entities in developing best management practices. The Ag task force may review and approve crop-specific best management practices which have been developed or recommended by an individual or group.
- (3) Approved best management practices information will be available from permitting authorities. The Ag task force, as it deems necessary, will hold public workshops on best management practices that have changed or are new and will periodically review the best management practices starting three years after approval.
- (4) The Ag task force will clarify best management practices and make interpretative decisions as needed, considering all authoritative sources on the subject.
 - (a) An individual or group may request a best management practice clarification from the task force.
 - (b) The chair of the Ag task force may direct the questioned practice to a subgroup of task force members, provided that agricultural, research, and regulatory interests are included and all task force members are notified, or may direct it to the whole AG task force.

- (5) The Ag task force will modify best management practices as necessary to incorporate the latest research.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), §173-430-050, filed 1/17/95, effective 2/17/95. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), §173-430-050, filed 9/17/90, effective 10/18/90; Order DE 77-20, §173-430-050, filed 11/9/77. Formerly WAC 18-16-050.]

173-430-060 RESEARCH INTO ALTERNATIVES TO AGRICULTURAL BURNING.

- (1) The department shall administer the research portion of the permit fee to carry out the recommendations of the Ag task force. In carrying out the recommendations, the department may conduct, cause to be conducted, or approve of a study or studies to explore and test economical and practical alternative practices to agricultural burning. To conduct any such study, the department may contract with public or private entities. Any approved study shall provide for the identification of such alternatives as soon as possible.
- (2) The Ag task force will annually review research needs and submitted proposals and make its recommendations to the department.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), §173-430-060, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), §173-430-060, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), §173-430-060, filed 9/17/90, effective 10/18/90; Order DE 77-20, §173-430-060, filed 11/9/77. Formerly WAC 18-16-060.]

173-430-070 GENERAL AGRICULTURAL BURNING PERMIT CONDITIONS AND CRITERIA.

Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out such burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

- (1) Permits must include the following conditions:
 - (a) No burning at night except as a best management practice;
 - (b) Complying with all fire safety regulations of the local fire protection agency including any no-burn directives they may issue;
 - (c) Calling the local air authority burning information line (if there is one) before lighting the fire;
 - (d) Burning when wind takes the smoke away from roads, homes, population centers, or other public areas, to the greatest extent possible;

- (e) No burning when adverse meteorological conditions;
 - (f) Burning only natural vegetation;
 - (g) No burning or adding fuel during any stage of an air pollution episode or local air quality burning ban;
 - (h) Attending the fire at all times.
- (2) If the permitting authority determines a specific situation will cause a nuisance under chapter 173-400 WAC or RCW 70.94.640, agricultural burning will not be allowed.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), §173-430-070, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), §173-430-070, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), §173-430-070, filed 9/17/90, effective 10/18/90; Order DE 77-20, §173-430-070, filed 11/9/77. Formerly WAC 18-16-070.]

173-430-080 RESPONSIBILITIES OF A PERMITTING AUTHORITY.

The permitting authority must establish and administer an agricultural burning permit system. The minimum responsibilities are described in this section.

- (1) The permitting authority must act on a complete application (as determined by the agency) within seven days of receipt.
 - (a) The permitting authority must evaluate the application and approve or deny all or part of it.
 - (b) The permitting authority must evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.
 - (c) If the application is denied, the reason must be stated.
- (2) Permitting authorities must determine day-to-day burning restrictions near populated areas and arrange for dissemination of the results.
- (3) The permitting authority or its delegate is responsible for responding to agricultural burning complaints.
- (4) The permitting authority must collect the fee and determine the local administration portion of the fee.
 - (a) Permitting authorities must issue a permit fee refund when a farmer decides to burn fewer acres than identified in the permit on confirmation by the permitting authority.
 - (b) Permitting authorities must formally adopt the local administration portion of the fee through rule, regulation, ordinance, or resolution.
- (5) The permitting authority must transfer the research and ecology administration portion of the fee to the department.

- (a) Funds should be transferred twice a year or as designated in the delegation agreement.
 - (b) The department must deposit all agricultural burning permit fees in the air pollution control account. Permitting authorities may deduct the local administration portion before forwarding the remainder to the department. The portion of the fee designated for research shall be deposited in a special account in the air pollution control account.
- (6) The permitting authority must coordinate compliance. Violations are subject to the remedies of chapter 70.94 RCW, Washington Clean Air Act.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), §173-430-080, filed 1/17/95, effective 2/17/95; 93-14-022 (Order 92-58), §173-430-080, filed 6/28/93, effective 7/29/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), §173-430-080, filed 9/17/90, effective 10/18/90; Order DE 77-20, §173-430-080, filed 11/9/77. Formerly WAC 18-16-080.]

173-430-090 RECEIVING DELEGATION--COUNTIES, CONSERVATION DISTRICTS, AND FIRE PROTECTION AGENCIES.

- (1) The permitting authority is the local air authority (or the department where no local air authority exists), or their delegate. The permitting authority is responsible for administering the agricultural burning permit program. The agricultural burning permit program may be delegated to conservation districts, counties, or fire protection agencies.
- (2) When a local air authority (or the department where no local air authority exists) finds that a county, fire protection agency or conservation district is capable of administering the permit program and desires to do so, it may delegate by administrative order the administration and/or enforcement authority of the program. Delegation criteria include:
 - (a) Demonstrating that the responsibilities listed under permitting authority responsibilities section can be fulfilled; and
 - (b) Employing, contracting with, or otherwise accessing someone educated and trained in agronomics.
- (3) Delegation may be withdrawn if the department or the local air authority finds that the agricultural burning program is not effectively being administered and/or enforced. Before withdrawing delegation, the delegated agency shall be given a written statement of the deficiencies in the program and a compliance schedule to correct program deficiencies. If the delegated agency fails to correct the deficiencies according to the compliance schedule, then the department or the local air authority may withdraw delegation.
- (4) Permitting authorities must work through agreement with counties (if the county is not the permitting authority) and cities to provide convenient methods for issuing permits and granting permission to burn.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), §173-430-090, filed 1/17/95, effective 2/17/95.]

173-430-100 SEVERABILITY.

The provisions of this regulation are severable. If any provision is held invalid, the application of such provision to other circumstances and the remainder of the regulation will not be affected.

[Statutory Authority: RCW 70.94.650. 95-03-083 (Order 94-17), §173-430-100, filed 1/17/95, effective 2/17/95.]